

Does Parole Work?

The Empirical Evidence from England and Wales

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The question "Does parole work?" can be given a number of meanings. One is whether parole—by which I mean the early release by a parole board of a prisoner on license so that a shorter period of the sentence is served in prison and a longer proportion under supervision—has a beneficial impact on the probability of recidivism: Is there, as it is sometimes put, a "parole effect"? Another question is whether parole selectors are able to identify accurately "good risk" prisoners for release while requiring those who are the "worst risks" to remain in secure conditions? A third is whether parole decisions are fair? This article will review the empirical evidence from England and Wales relating to these questions. The term parole will be used to refer to discretionary conditional release under supervision of those serving determinate sentences of imprisonment. It can therefore be contrasted with automatic conditional release under supervision, which is not parole.

I. IS THERE A "PAROLE EFFECT"?

A. 1960s and 1970s

The first study in England and Wales to examine whether parole has a "crime suppressive effect" was conducted by Christopher Nuttall and his colleagues at the Home Office Research Unit in the late 1960s and early 1970s.¹ The researchers followed up a group of 381 adult male prisoners who had been paroled between August and December 1968, and a control group of 431 parole-eligible adult male prisoners who had been released but not paroled during the same period. Using a statistical reconviction prediction tool, which was based on sixteen factors² and

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¹ Nuttall's findings were eventually published as a Home Office Research Study in 1977. See CHRISTOPHER NUTTALL ET AL., *PAROLE IN ENGLAND AND WALES* (Home Office Research Study No. 38, 1977).

² The risk prediction tool was derived from an analysis of a sample of 2,276 adult male prisoners who had been discharged from prison in 1965.

was designed to predict the probability of a particular parole applicant being reconvicted within two years of release, the researchers compared the expected and observed reconvictions of the prisoners in the two groups. Later, they studied a further sample of 734 adult male prisoners who had been paroled between October 1969 and March 1970. The expected and observed rates of reconviction of these prisoners were compared with those of a group of 289 randomly-selected adult male non-parolees. When all these data were analyzed, the researchers found "no evidence" that parole had served "to reduce the rate of reconviction within two years of release." However, at six months from release (the average time spent on license by those released on parole in their sample), it was found that "parolees did better than expected." This, the researchers said, could imply that parole had an effect in reducing reconviction "during the currency of the license." On the other hand, as non-parolees did worse than expected, the findings were "also consistent with a selection effect," i.e., in selecting prisoners for parole, decision makers had considered factors not included in the predictor that were nonetheless associated with the probability of reconviction, for example the prisoner's plans on release.³

The second study in England and Wales to examine the efficacy of parole in reducing recidivism was carried out in the mid-1970s by the Statistical Department of the Home Office. A sample of 985 parole-eligible adult male prisoners who had been discharged from prison in 1973 was analyzed.⁴ The researchers found that within two years of release the reconviction rate was lower for parolees than for non-parolees, whatever the length of their sentence. There was therefore evidence that parole decision makers were selecting (at least in statistical terms) the "best

³ NUTTALL ET AL., *supra* note 1, ch. 6, at 76-77. Under the terms of the original parole scheme, created by sections 59 to 62 of the Criminal Justice Act 1967, a prisoner became eligible for parole once he had served one-third of his sentence or twelve months, whichever expired later. Because all prisoners could earn a third of their sentence as "remission," in practice this meant that only those sentenced to more than eighteen months were eligible for parole. The parole "window" (the period of time during which a prisoner remained eligible for parole) lasted until the two-thirds point of the sentence had been reached. At that point all prisoners (whether they had been granted parole or not) were released on "unconditional remission," so long as they had not forfeited that right by committing offenses against prison discipline. Once granted parole, a prisoner would be released under supervision on "parole license." That license would contain a list of all the conditions that governed the prisoner's release. Breach of any one of these conditions would put the prisoner at risk of being returned to custody. Parole licenses lasted until the two-thirds point of the sentence.

In 1991, the parole system was substantially altered following the enactment of the Criminal Justice Act 1991. Under the terms of the new scheme, only prisoners sentenced to four years or longer were eligible for parole—now called "discretionary conditional release." Those serving shorter sentences were to be released on license after having completed half their sentence. Those sentenced to four years or longer became eligible for parole only at the halfway point of their sentence, were released at the two-thirds point if not granted parole, were required to submit to statutory supervision until the three-quarters point and, for the rest of their sentence, remained "at risk" of being returned to prison for the unexpired portion if they were convicted of another offense committed before the sentence had terminated.

⁴ The study is described in HOME OFFICE, PRISON STATISTICS ENGLAND AND WALES 1977, ch. 8, Cmnd. 7286 (1978).

bets" for parole. Like Nuttall before them, however, the researchers were also interested in establishing whether there was a discernable "parole effect." Using Nuttall's risk prediction instrument as a control, they divided the prisoners in their sample into one of three risk bands—"high," "medium," and "low." They found that, in the case of prisoners in the same risk group who had been sentenced to terms of imprisonment of four years or less, "there was relatively little difference in the reconviction rate of those . . . granted parole and those not granted parole."⁵ But, for those in the same risk group who had been sentenced to more than four years' imprisonment, "there were large differences in the reconviction rates of those paroled and those not paroled." This led the researchers to conclude, tentatively, that "the lower reconviction rate of those with longer sentences who were paroled might have resulted from some aspect of the granting of parole." They speculated as to the factors that might have been at work: those paroled from long sentences may have had more to lose from reconviction than those paroled from short sentences;⁶ they also received longer periods of supervision in the community. Nonetheless, the researchers recognized that the lower reconviction rate for long-term paroled prisoners could "have resulted from the use by the Parole Board of relevant selection criteria not taken into account in the classification of risk."⁷

Twelve months later the Statistical Department of the Home Office followed up the same sample of prisoners for a third year. By this time the supervision periods for most of the parolees in the sample had expired. As with the two-year study, the analysis, which was published in *Prison Statistics England and Wales 1978*,⁸ showed that the reconviction rates for prisoners in all three risk groups who had been released from sentences of imprisonment in excess of four years were lower for parolees than for non-parolees. And the same was true of short-term prisoners in both the "low" and "medium" risk groups. Those in the "high" risk group, however, proved to be the exception, as a larger proportion of the paroled than the non-paroled prisoners were reconvicted.

Heartened by these findings, the Parole Board for England and Wales speculated in its *1978 Annual Report* that the lower reconviction rate for those sentenced to more than four years might have been a reflection of "the impact of a period on license." It added, however, that it awaited "with considerable interest the results of the further work which is being undertaken in this direction."⁹

⁵ *Id.* at 59.

⁶ Whatever its general truth, this hypothesis seems implausible in the case of re-offending that occurs late in the license period.

⁷ The study supported Nuttall's finding that there was a difference in reconviction rates between parolees and non-parolees within six months of their release, but not his finding that in the case of long-term prisoners (those sentenced to more than four years) the difference disappeared before two years after release. See HOME OFFICE, *supra* note 4, ¶ 11, at 60.

⁸ HOME OFFICE, *PRISON STATISTICS ENGLAND AND WALES 1978*, ch. 8, Cmnd. 7626 (1979).

⁹ HOME OFFICE, *REPORT OF THE PAROLE BOARD FOR 1978* ¶ 6 (1979).

B. 1980s

In fact, no significant new work was forthcoming until the late 1980s, when the findings of two further Home Office studies were published.¹⁰ The first, carried out by Denis Ward, was designed to see if Nuttall's risk prediction instrument was still valid for prisoners serving sentences of two years or more.¹¹ Based on a sample of 3,554 male prisoners discharged from prison in 1977, 1978 and 1979, Ward's study found that the predictor could be improved by adding a further factor—length of sentence—to the model. However, because it would require “a substantial amount of statistical and other work” to incorporate this into the calculation, Ward concluded that, as it stood, Nuttall's predictor was sufficiently accurate for its task, namely parole selection.¹² Ward also showed that the reconviction rates across a two-year follow-up period were significantly better for parolees than non-parolees. But he was careful to point out that this could be because parole decision makers (the Parole Unit, Local Review Committees¹³ and the Parole Board) had, when considering parole applications, taken into account factors which were not included in the statistical prediction instrument but which nonetheless affected a prisoner's risk of reconviction.¹⁴

A second study published at this time, conducted by John Ditchfield, sought to fill a gap left by the studies of Nuttall and the Statistical Department of the

¹⁰ In 1981, the Home Office Review of Parole in England and Wales, after considering the available research, noted that “parole from short sentences was in general less successful than parole from medium sentences (up to 10 years); and the best result came from those paroled from medium sentences in the low and medium risk categories.” HOME OFFICE, REVIEW OF PAROLE IN ENGLAND AND WALES ¶ 39, at 10 (1981). (See ¶ 40, at 10, for speculation as to why this may have occurred.) It also asked the Home Office statisticians to provide information about the reconviction rate of the prisoners in their sample within one year of release.

¹¹ DENIS WARD, THE VALIDITY OF THE RECONVICTION PREDICTION SCORE (Home Office Research Study No. 94, 1987). In the late 1970s, R.J. Sapsford tested Nuttall's model against a sample of male offenders in prison in 1972 to see if factors associated with reconviction had changed in a way that might invalidate Nuttall's calculations. Sapsford found that Nuttall's model was “still a fairly good overall predictor of the reconviction of parole-eligible English prisoners.” See R.J. Sapsford, *Further Research Applications of the “Parole Prediction Index”*, 6 INT'L J CRIMINOLOGY & PENOLOGY 247, 248, 252 (1978).

¹² See WARD, *supra* note 11, at 2; see also HOME OFFICE, THE RECONVICTION PREDICTION SCORE (May 1991). As it had not been derived for prisoners serving sentences shorter than two years, the predictor was not relevant for those who became eligible for parole under section 33 of the Criminal Justice Act 1982.

¹³ Local Review Committees (LRCs) were, until 1994, the first tier of parole decision making in England and Wales. There was an LRC for each prison, and their membership consisted of “the governor of the prison”; a probation officer; a member of the prison's Board of Visitors; and a so-called “independent member,” who was not a probation officer or a member of the Board of Visitors. See THE LOCAL REVIEW COMMITTEE RULES 1967, S.I. 1967 No. 1462, r. 1(2) and (3). A fifth person (another “independent”) was added to the membership by THE LOCAL REVIEW COMMITTEE (AMENDMENT) RULES 1973, S.I. 1973 No. 4, r. 2(c), 29 Jan. 1973.

¹⁴ See WARD, *supra* note 11, at 7.

Home Office, neither of which had identified the proportion of parolees who were reconvicted of offenses committed during the period of their parole license.¹⁵ Ditchfield's sample consisted of six groups of parolees: those serving short sentences (less than three years) who had been released from prison in 1985; those serving medium sentences (between three and less than five years) who had been released in 1984; and those serving long sentences (five years or more) who had been released in 1983—with each of these groups being sub-divided between young offenders (those aged less than 21 on the date of their release) and adult offenders (those aged 21 or more on the date of their release). From his data, Ditchfield estimated that about 19% of male parolees (25% of young adults and 17% of adults) would *eventually* be convicted of an offense committed while on parole license. He also found that short-sentence parolees were less likely to be reconvicted of offenses committed while on parole license than were medium- and long-sentence parolees. In part, this reflected the fact that prisoners in the latter two groups had, on average, longer licenses and were therefore at risk of re-offending for a longer period of time. Nonetheless, the fact that the proportions reconvicted amongst medium- and long-sentence prisoners were very similar suggested to Ditchfield that the average period spent on license was not the only factor at work.

Although the Parole Board must have been disappointed by Ditchfield's estimate that nearly one in five male parolees would eventually be convicted of an offense committed while on parole license, it was nevertheless optimistic about the value of parole. In its written evidence in 1987 to the Carlisle Committee (a Committee appointed by the Home Secretary to review the parole system in England and Wales), the Board boldly asserted that there were "solidly based grounds for releasing selected offenders for a period of conditional license, on the lines envisaged when the parole scheme began."¹⁶ It admitted that it was impossible "to distinguish the effects of selection from those of supervision, support and the threat of recall during the license period," but it felt that the lower reconviction rates among offenders initially paroled might point towards the overall efficacy of the scheme.¹⁷ It was also keen to emphasize some of the other advantages of parole: that it provided prisoners with "something to work for"; that it encouraged them, with help from the Probation Service, to plan for their eventual release; and that, for prison staff, it introduced "a positive, forward-looking element into the handling of prisoners."¹⁸

¹⁵ See John Ditchfield, *Offending on Parole*, 26 RESEARCH BULL. 13 (1989). The earlier studies were based on fixed follow-up periods (six months, two years and three years), whereas Ditchfield's study concentrated on the period of time each paroled prisoner had spent in the community on parole license. As well as reconvictions that occurred during this period, Ditchfield's study also took into account reconvictions that occurred at a later stage but related to offences committed during that period.

¹⁶ HOME OFFICE, REPORT OF THE PAROLE BOARD FOR 1987 ¶ 8, at 3 (1988).

¹⁷ See *id.* at ¶ 15, at 5.

¹⁸ See *id.* at ¶¶ 23–24, at 8.

Some of this optimism was also shared by the Carlisle Committee when it reported in 1988, although the Committee acknowledged the difficulty of coming to any firm view about the long-term effects of parole. After reviewing the studies conducted by Nuttall *et al.* in 1977, the Home Office in 1978, and Ward and Ditchfield in the late 1980s, the Committee concluded that it was “reasonably clear” that parole and supervision did reduce the probability of re-offending in the short term. It added, however, that there was still uncertainty concerning “how the release decision and the provision of supervision interact to produce this effect.”¹⁹

C. 1990s

By the beginning of the 1990s, therefore, the jury was still out as to whether there was a discernable “parole effect.” In a measured summary of the extent of available knowledge, published in 1990, Professor A. K. Bottomley said:

It would seem unwise to dismiss out of hand the claim that parole release might have some positive effects on those to whom it is granted—certainly during the period of supervision, if not beyond. To disentangle the particular aspects of parolee status that might be responsible for these effects is very much more challenging—whether it is indeed rehabilitation via “aid and assistance,” surveillance, deterrence (to avoid recall), or “all in the mind” must remain an open question.²⁰

Yet, just a year later, in 1991, Robert Hann, William Harman, and Ken Pease defended a more sanguine view of the benefits of parole. After reviewing research in Canada, Great Britain and the United States,²¹ they argued that there was a “parole effect” which went beyond the fact that parole boards would be expected to select the better risk prisoners for parole. But, like the Carlisle Committee (whose conclusions they rather uncharitably interpreted²²), they agreed that it was not possible to say

¹⁹ HOME OFFICE, THE PAROLE SYSTEM IN ENGLAND AND WALES: REPORT OF THE REVIEW COMMITTEE ¶ 49, at 15, Cm 532 (1988). The Committee’s thinking on the value of parole seems to have been affected to some extent by a residual belief in the disputed notion of “prisonization” (and possibly the even more dubious notion of a “peak” in training). See *id.* ¶ 284, at 70: “To the extent that prison has any positive effect it is the early days of the sentence which count.” For a discussion of the influence of these notions on the development of the English parole system, see Stephen Shute, *The Development of Parole and the Role of Research in its Reform*, in THE CRIMINOLOGICAL FOUNDATIONS OF PENAL POLICY: ESSAYS IN HONOUR OF ROGER HOOD 377, 383–85 (2003).

²⁰ A. Keith Bottomley, *Parole in Transition: A Comparative Study of Origins, Developments, and Prospects for the 1990s*, in 12 CRIME AND JUSTICE 319, 338 (Michael Tonry & Norval Morris eds., 1990).

²¹ Robert Hann, William Harman & Ken Pease, *Does Parole Reduce the Risk of Reconviction?*, 30 HOW. J. CRIM. JUST. 66 (1991). Professor Pease was a member of the Parole Board from 1987–1991.

²² They claimed that “[t]he Carlisle Report fails to explore the research evidence on parole effects,” and they condemned as “superficial and cavalier,” *id.* at 71, the Carlisle Committee Report’s

which of two hypotheses best accounted for the difference in reconviction rates: was it because parolees received supervision on parole which helped reduce recidivism? Or was it because paroled prisoners responded favorably to the fact that they had been chosen for parole (or non-paroled prisoners responded negatively to having been denied it)?

Towards the end of the decade the “efficacy” of parole in England and Wales was explored again, this time by Home Office researchers Tom Ellis and Peter Marshall. The researchers tracked the reconvictions of a sample of prisoners who had been released from prison in 1991. Their analysis revealed a “small but consistent difference” (of around two percentage points) between the actual and predicted two-year reconviction rates of the 9,168 parolees in the sample.²³ The proportionate differences were greater for long-term prisoners (those serving sentences of four years or more) than for short-term prisoners. The researchers also found that the parolees in the sample had a significantly lower reconviction rate than the non-parolees; that the parolees were reconvicted on significantly fewer occasions than the non-parolees; and that the parolees were reconvicted later than the non-parolees.²⁴

D. Conclusion

Where, then, does all this leave the question posed at the beginning of this section? After thirty-five years of research, can it now be said with confidence that parole either does or does not have a beneficial effect on recidivism? Sadly, at least as far as England and Wales are concerned, the answer is no. It has been possible to establish that parolees are, on average, less likely to be reconvicted (at least in the short term) than non-parolees. But it has not been possible to demonstrate conclusively that there is a “parole effect” that operates independently of a possible “selection effect” (i.e., that parole selectors may incorporate into their decision making factors which have a bearing on risk but which do not form part of the available statistical risk prediction tools).

II. “FALSE POSITIVES” AND “FALSE NEGATIVES”

The second question is whether parole selectors are able to distinguish accurately between “good risk” and “bad risk” prisoners. On one level, the answer to this question is clear. Empirical research has, as we have seen, consistently

claim that the lower offending rate of parolees “is exactly what one would in any event expect: it would indeed be alarming if . . . the Parole Board and LRCs were having no success at all in separating the sheep from the goats.” HOME OFFICE, *supra* note 19, at ¶ 48.

²³ Tom Ellis & Peter Marshall, *Does Parole Work?*, in 39 RESEARCH BULL.: SPECIAL EDITION: THE USE AND IMPACT OF COMMUNITY SUPERVISION 43, 44 (1998).

²⁴ See *id.* at 47–48; see also Tom Ellis & Peter Marshall, *Does Parole Work? A Post-Release Comparison of Reconviction Rates for Paroled and Non-Paroled Prisoners*, 33 AUSTRALIAN AND N.Z. J. CRIMINOLOGY 300 (2000).

shown that prisoners who are released on parole do, in general, have lower statistical risks of reconviction than prisoners who are denied it. But this statistical truth does not tell us what proportion of those who are denied parole on the grounds of perceived “high risk” would have confounded that prediction and stayed crime free if they were to have been released (so-called “false positives”) or what proportion of those who are released because they are perceived to be “low risk” end up abusing that trust by committing further offenses while on parole license (so-called “false negatives”). Recently, however, Professor Roger Hood and I published findings from a follow-up study of serious sex offenders which casts some light on this issue.²⁵

Our study grew out of observations we made in 1992, 1993 and 1994, of decisions taken by the Parole Board on nearly 1,000 prisoners who had been sentenced to determinate terms of imprisonment of four years or longer. The sample included 192 male prisoners who had been convicted of a serious sexual offense.²⁶ Some six years later, in the summer of 2000, we obtained information relating to the known reconvictions of 174 of these offenders. By that time most had been at liberty for a considerable length of time. This enabled us to follow up 162 of them for four years after their release from prison, and 94 for as long as six years. Such a long follow-up period was clearly an advantage, given the known initially low and relatively slow accumulation of sexual reconvictions over time.

From information extracted from the parole dossiers, we distinguished between prisoners who had been imprisoned for a sexual offense against an adult only (i.e., a victim aged sixteen or over) and prisoners who had been imprisoned for a sexual offense against a child or children (defined as a person under the age of sixteen). Where the offense was committed against a child, we distinguished between cases where the victim was within the offender’s own family unit²⁷ and cases where the victim was not. On the basis of our observations we were able to identify prisoners who were thought by at least one panel member to pose a particularly “high risk” of re-offending, even if other members disagreed, as they occasionally did. The degree of risk obviously varied, but cases were only classified as “high risk” where Board members used terms such as “he is risky,” “a

²⁵ For a full account (on which this section of the article draws), see Roger Hood et al., *Sex Offenders Emerging From Long-Term Imprisonment*, 42 BRIT. J. CRIMINOLOGY 371 (2002). Statistics published annually by the Parole Board give information on recall rates (shown as a percentage of the average number of prisoners on parole) and reasons for recall. The recall rate has fluctuated over the years: the lowest rate since 1984 was 8.2%, achieved in 1997/98; the highest was 15.8% in 1991. The proportion of recalled prisoners who were recalled for “committing further offenses while on license” has also varied: the highest was 54.4% in 1986; the lowest 27.1% in 1988. Other recalls were for breaches of different license conditions, for example for “being out of touch” with the supervising officer.

²⁶ Their parole applications had been considered by twenty-four panels of the Parole Board, twenty of which included a psychiatrist. In 1992 panels had four members; in 1993 and 1994 they only had three.

²⁷ That is, the offender was a relative or step-parent living in the same household as the child, or a grandparent or other close relative with regular access to the child.

very high risk,” “a man of violence,” “he scares the living daylight out of me,” “alarming,” “frightening,” “an entrenched sex offender,” “an extremely grave risk to children,” “dangerous,” or words of that kind.²⁸ These risk assessments (so-called “clinical” assessments) were compared with the reconviction data.

Although the percentage of prisoners convicted of a further sexual offense increased as the follow-up period lengthened, it remained comparatively low: 4.3% after four years; and 8.5% after six years.²⁹ Of those who had originally offended solely against children within their own family, none was convicted of a further sexual crime, even when the follow-up period was extended to six years. In other words, all the offenders against children who went on to be convicted of a further sexual crime had originally committed an extra-familial sexual offense: 9.1% of these extra-familial sex offenders were convicted of a further sexual crime after four years; and about one in four (26.3%) after six years. Overall, the reconviction rate for a sexual crime of those who had originally been convicted of a sexual offense against a *child or children* rose from 3.1% after four years to 9.3% after six years; and at the end of six years the reconviction rate for a sexual crime for those who had originally been convicted of a sexual offense against an *adult* reached 7.5%.

But what proportion of the prisoners whom at least one member of the Parole Board panel had regarded as a “high risk” went on to be reconvicted of a sexual offense during the follow-up periods? And, of those *not* considered to be especially risky, what proportion confounded that assessment by being convicted of a further sexual crime? Bearing in mind that these findings on the “accuracy” of Parole Board members’ assessments of risk relate only to reconvictions, and not to re-offending, they can be summarized as follows:

- Every one of the small number of sex offenders who was subsequently convicted of a further sexual crime at the four-year follow-up stage had been identified by at least one panel member as a “high risk.” These prisoners were termed “true positives”—they were regarded by at least one member of the Parole Board panel as posing a “high risk” and the subsequent reconviction data revealed that prediction to have been correct.
- In contrast, a high proportion (92%) of those who had been identified as “high risk” turned out not to have been convicted of a further

²⁸ On this basis, half of the cases were rated as “high risk” or “dangerous” by at least one panel member. Where there was no overt mention of “high risk” or “danger” it did not mean that the prisoner was regarded as posing no risk at all. As one Board member put it: “Obviously there is a risk, there always is.”

²⁹ All of the prisoners who were reconvicted of a sexual crime were imprisoned again for a considerable period: the longest being life imprisonment or an indefinite hospital order; the shortest being two years.

sexual crime at the end of the four-year follow-up period. In that sense they were “false positives.”³⁰

- Where no member of the Parole Board panel had identified the prisoner as a “high risk,” the prediction turned out to be correct in all cases. By this criterion they were “true negatives.” In other words, there were no “false negatives” in the four-year follow-up period.
- The “false positive” rate was highest (100%) amongst those who had been released after serving a sentence for an offense against a child within their own family.
- As many as two-thirds of the sex offenders who “denied their guilt”—such prisoners accounted for a third of those for whom an assessment of risk had been made—were identified by at least one panel member as being a “high risk,” compared with half of the “non-deniers.” However, only one “denier” was subsequently convicted of a further sexual crime. In other words, with just one exception, all of those who were subsequently convicted of a further sexual crime had *not* been “deniers.” The difference was statistically significant.

This study suggests that Parole Board members (at least at the time the research was carried out) over-estimated the risk of reconviction posed by serious sex offenders, especially those who had committed their crimes against children wholly within their own family and those who denied their offense. In one respect, the finding should not be taken as a criticism of members of the Parole Board. The problem of “false positives” arises largely because of the difficulty of trying to predict rare events—a difficulty that has haunted all efforts to identify in advance, whether by clinical or by actuarial means, those who subsequently turn out to be “dangerous.” On the other hand, the fact that Parole Board members were prone to over-estimate the risk of reconviction of the prisoners they were considering is a matter for concern, and similar worries were highlighted by another study of parole decision making that Roger Hood and I carried out in the late 1990s.³¹ In that study, Board members were asked to complete “risk assessment forms” for each prisoner and these clinical assessments were then compared with the prisoners’ statistically-calculated risk of reconviction scores. The comparisons revealed that only 15% of the 438 prisoners in the sample had an actuarial risk of 20% or higher

³⁰ When one considers only those who had been released for six years, the “false positive” rate fell, but it was still 78% for a sexual reconviction.

³¹ ROGER HOOD & STEPHEN SHUTE, *THE PAROLE SYSTEM AT WORK: A STUDY OF RISK BASED DECISION-MAKING* (Home Office Research Study No. 202, 2000).

of being reconvicted of a *serious* offense³² during the parole license period, yet Parole Board members with responsibility for “leading” the discussion on the case believed that as many as 59% posed that level of risk. At the other end of the scale, 59% of prisoners had an actuarial risk of less than one in five of being reconvicted of *any* offense during the period of possible parole license. Lead members, in contrast, considered that only 35% of prisoners posed such a low level of risk.³³

These findings, therefore, provide further strong evidence that panel members in the late 1990s were, on aggregate, making decisions on the basis of unduly pessimistic estimations of risk, at least as compared with actuarial calculations.³⁴

III. FAIRNESS IN PAROLE DECISION MAKING

This brings me to the third, related, question: Is parole decision making in England and Wales fair? Three aspects of this issue will be explored: the extent of unanimity and consistency amongst Parole Board members; decision making in cases involving prisoners from ethnic minorities; and Parole Board members’ use of statistical reconviction prediction scores.

A. *Unanimity and Consistency*

One way of testing consistency in decision making is to see to what extent decisions can be predicted statistically. Hence, in our study of parole decision making, entitled *The Parole System at Work*, Roger Hood and I set about constructing, by means of logistic regression analysis, a statistical model capable of predicting parole outcomes.³⁵ Derived from decisions taken about prisoners serving determinate sentences of four years or longer, the model was based on seven variables, all of which it is proper for the Parole Board to take into account: actuarial risk of reconviction of a serious offense during the possible parole period; the prisoner’s security category; the recommendation for or against parole made by a prison-based probation officer; whether that officer had indicated in his or her report that the prisoner had completed an offending behavior course; the recommendation for or against parole made by the prisoner’s home probation officer; the number of adjudications against the prisoner for breaches of prison discipline; and whether the prisoner had any previous convictions for a sexual or violent crime.

³² For a discussion of the prediction instrument used, see *infra* text accompanying notes 52–58.

³³ See HOOD & SHUTE, *supra* note 31, at 47.

³⁴ A similar pattern was found when comparisons were made for the sex offenders in the sample between the lead members’ assessments of risk and the score produced by a risk assessment instrument for sex offenders devised by Dr. David Thornton (a psychologist who was at that time working for Her Majesty’s Prison Service).

³⁵ See HOOD & SHUTE, *supra* note 31, at ch. 6.

The model turned out to be very powerful. It was capable of predicting both the granting and refusing of parole with 85% accuracy, which is a very good indication of consistency in parole decision making. That conclusion was further reinforced by the fact that our observations of parole panels showed that the views of the Parole Board member who had been delegated to lead the discussion were endorsed by the other two members of a three-person panel in more than nine out of ten cases.³⁶

B. *Ethnicity*

What about the relationship between ethnicity and parole decision making? In 1994 the Home Office Research and Statistics Directorate published a *Statistical Bulletin*³⁷ on the proportion of prisoners from different ethnic groups who had been granted parole. The study was made possible by the introduction in 1991 of a new computer system, known as the Inmate Information System, which contained basic information, from 1990 onwards, about the sex and ethnicity of prisoners, the offense(s) they had committed, their sentence length, and the outcome of their parole applications. The study examined all parole decisions (more than 23,000) made in England and Wales in 1990. It revealed that, although there were differences between the parole rates for the different ethnic groups, these could largely be explained by differences in sentence lengths and types of offense committed. But, because the computerized database did not record other relevant information about the prisoners—such as details of their criminal history, their behavior while in prison, their home circumstances, or the likelihood of their cooperating with parole supervision—important variables could not be included in the analysis.

The Parole Board welcomed the results of the study and promised to “keep in mind the need for further research into possible areas of discrimination within both the criminal justice processes leading to consideration of parole and [its] own decision making.”³⁸ But, as it turned out, this topic was not explored in any depth until 2000 when Roger Hood and I used our statistical prediction model to show that apparent differences in paroling rates could, at least for our sample of prisoners, be explained by legally relevant factors. It was not possible to say, however, whether the same would have been true for a much larger sample of cases. We therefore recommended that there be further research, using a sophisticated statistical model of the kind we had developed, to monitor parole

³⁶ See *id.* at 23. In a few cases there was some discussion and dissent, but in eight out of ten cases no disagreement of any kind was voiced.

³⁷ HOME OFFICE, PAROLE RECOMMENDATIONS AND ETHNIC ORIGIN, ENGLAND AND WALES 1990 (Home Office Statistical Bulletin No. 2, 1994).

³⁸ HOME OFFICE, REPORT OF THE PAROLE BOARD FOR 1993 ¶ 29, at 6 (1994).

decision making in relation to variables, such as ethnicity and gender, which ought to have no relevance to the outcome.³⁹

That suggestion was soon adopted by the Research, Development and Statistics Directorate of the Home Office. After analyzing 4,746 parole decisions made in 1999 and 2000, the Directorate developed a parole predictor based on seven variables—offense type; actuarial risk of reconviction; category of prison; number of adjudications; whether the prisoner was a sex offender; if so, whether he had attended a sex offender treatment program; and, finally, whether he had breached a probation or community service order in the past. The model was then used to explore whether variations in release rates between the different ethnic groups were explicable in terms of factors that are proper for the Parole Board to take into account.⁴⁰ The study confirmed our findings. There was no statistically discernible bias against ethnic minorities in Parole Board decision making.

Subsequently, further analysis was carried out by the Home Office on a total of 6,208 parole decisions which had been made by the Board during the same period (1999–2000). A sub-set of these cases (those for which a complete set of data was available⁴¹) was used to construct a second statistical prediction model, this time based on ten variables: offense type; category of prison; number of adjudications; whether the prisoner had breached a probation or community service order in the past; number of previous parole applications during the current sentence; age at the two-thirds point of the sentence; number of previous convictions as a juvenile; number of previous convictions as an adult; number of convictions received annually since first conviction; and gender. The model proved capable of predicting the parole decisions for the 3,440 cases in the sub-sample with 77% accuracy but, significantly, the researchers found that adding to the model a variable relating to the ethnicity of the prisoner did not increase its predictive power or “affect the direction or size of the effect of any of the variables already in the model.” Once again, therefore, the researchers concluded that there was “no evidence of differential treatment of minority ethnic prisoners by the Parole Board.”⁴²

C. *Reconviction Prediction Scores*

This brings me to my final point: the use of statistical reconviction prediction scores in parole decision making. For many years, the score developed by Christopher Nuttall in the late 1960s⁴³ was calculated by the Home Office’s Parole

³⁹ See HOOD & SHUTE, *supra* note 31, at 68.

⁴⁰ HOME OFFICE, ANNUAL REPORT AND ACCOUNTS OF THE PAROLE BOARD 2000–2001, at 18–19 (2001). The model correctly predicted 76% of the parole outcomes in the sample.

⁴¹ Sex offenders were also excluded, because “the model performed badly for this group.”

⁴² See UMA MOORTHY, KATH CAHALIN & PHILIP HOWARD, ETHNICITY AND PAROLE (Home Office Findings No. 222, 2004).

⁴³ See NUTTALL ET AL., *supra* note 1.

Unit and included in the parole dossiers for all male prisoners serving sentences of two years or more who had been found "unsuitable" for parole by their LRC.⁴⁴ But the score appeared to have only a limited impact on Parole Board members' decision making. Thus, in 1988, the Carlisle Committee indicated that its own observations had led it to believe that many Parole Board members paid "little regard to the score in formulating their views on the case."⁴⁵ Similarly, Professor Mike Maguire, writing in the early 1990s on the basis of his personal experience as a Board member from 1988 to 1991, said the score was "largely ignored by panels," which preferred "to base their decision on the individual circumstances of a case, rather than the potential parolee's membership of a particular risk group."⁴⁶

Many felt this disregard of statistical information was undesirable. Professor Bottomley, for example, argued in 1984 that a "constantly updated parole prediction score should be a key factor in the decision to release—rather than being the marginal, administrative device, it is at the present time."⁴⁷ The Carlisle Committee agreed and firmly recommended that the Board should be "under a duty to take account of all appropriate prediction techniques."⁴⁸ In 1992 the Home Secretary responded positively to this suggestion by including such a duty in his directions to the Board.⁴⁹ But old habits die hard and observations of Parole Board panels that Roger Hood and I carried out in the latter part of 1992 revealed that the score "played almost no part in the assessment of risk."⁵⁰ Further observations, in 1993 and 1994, showed that even where the score was available to Board members, "nearly 60% of cases were discussed with no reference being made to it at all."⁵¹

⁴⁴ Because it was calculated at this time, the score was never available to LRCs.

⁴⁵ HOME OFFICE, *supra* note 19, ¶ 330, at 81. Writing about the United States of America in 1966, Manuel López-Rey observed:

Contrary to some beliefs the use of parole prediction tables is fortunately not widespread. In a recent inquiry on the parole boards of the fifty States and other jurisdictions, of the forty-eight States responding forty-four stated that they never have and are not now using the device. . . . In sum, parole prediction tables may be used as statistical references but not as a guide and even less as representing decisive scientific experience.

Manuel López-Rey, *Release and Provisional Release of Sentenced Prisoners*, 6 BRIT. J. CRIMINOLOGY 236, 261–62 (1966).

⁴⁶ Mike Maguire, *Parole*, in CRIMINAL JUSTICE UNDER STRESS, 179, 194 (Eric Stockdale & Sylvia Casale eds., 1992).

⁴⁷ A. Keith Bottomley, *Dilemmas of Parole in a Penal Crisis*, 23 HOW. J. CRIM. JUST. 24, 36 (1984).

⁴⁸ HOME OFFICE, *supra* note 19, at ¶ 330.

⁴⁹ See 211 PARL. DEB. H.C. (6th ser.) col. 981, July 16, 1992 (Written Answer).

⁵⁰ ROGER HOOD & STEPHEN SHUTE, *PAROLE IN TRANSITION: EVALUATING THE IMPACT AND EFFECTS OF CHANGES IN THE PAROLE SYSTEM: PHASE ONE, ESTABLISHING THE BASE-LINE* ¶ 175, at 72 (Oxford Centre for Criminological Research, Occasional Paper No. 13, 1994).

⁵¹ ROGER HOOD & STEPHEN SHUTE, *PAROLING WITH NEW CRITERIA: EVALUATING THE IMPACT AND EFFECTS OF CHANGES IN THE PAROLE SYSTEM: PHASE TWO* ¶ 53, at 26 (Oxford Centre for Criminological Research, Occasional Paper No. 16, 1995).

The Home Office, however, kept faith in statistical prediction scores and, in the early 1990s, it invested resources to devise a new prediction instrument. The predictor was needed because the discretionary conditional release scheme that had been introduced by the Criminal Justice Act 1991 was limited to prisoners serving determinate sentences of four years or more, whereas the old score had been derived from the records of prisoners serving determinate sentences of more than eighteen months. The task of constructing the new prediction tool was given to Professor John B. Copas, Peter Marshall and Roger Tarling.⁵² They examined the background characteristics of a sample of more than 1,200 prisoners released in 1987 from determinate sentences of four years or longer. They also noted any offenses that had been recorded against the released prisoners' names during a two-year follow-up period.⁵³ Their subsequent analyses identified six characteristics (all of which were available at the time of the original sentence) that best estimated the prisoners' likelihood of reconviction.⁵⁴ From these, two risk scores were calculated: one for reconvictions arising from serious re-offending (defined as an offense that resulted in the imposition of a new custodial sentence); and one for reconvictions for offenses of any kind, other than minor summary only offenses.

The new Risk of Reconviction Score (or ROR) became available from 1994 onwards. For a year or two thereafter, a page setting out the score was routinely included by the Home Office in every parole dossier.⁵⁵ The score was clearly an improvement on the old predictor in that it discriminated between serious and more minor offending, an innovation that was particularly helpful as the Home Secretary had directed the Board to give more weight to the risk that a potential parolee might commit a serious offense than to the risk that the parolee might commit a less serious offense. Unlike its predecessor, the new predictor also enabled an assessment to be made of the probability of a prisoner's reconviction during the period of possible parole license, not just within two years of release. Nonetheless, by the time Roger Hood and I conducted our third, and largest, study of parole in the late 1990s, the Home Office had decided to discontinue its practice of calculating risk

⁵² See JOHN B. COPAS ET AL., *PREDICTING REOFFENDING FOR DISCRETIONARY CONDITIONAL RELEASE* (Home Office Research Study No. 150, 1996).

⁵³ In order to overcome the fact that a delay will occur between an offense being committed and a conviction being secured (in the Risk of Reconviction sample the average delay was six months) the statisticians followed up their sample for four years and asked the National Identification Service at New Scotland Yard to identify the date of commission of the offense.

⁵⁴ These were: age at conviction; number of youth custody sentences; number of adult custodial sentences; number of previous convictions; type of offense committed; and the sex of the offender.

⁵⁵ While the Board recognized the predictor's "usefulness" in its deliberations, it still believed that a number of refinements could be made, in particular in its application to sex offenders who, the Board complained, tended "to register low scores for re-offending." HOME OFFICE, *REPORT OF THE PAROLE BOARD FOR 1994* ¶ 16, at 4 (1995); see also Maguire, *supra* note 46, at 194 (claiming that the predictor's predecessor tended to be "less reliable" in more serious cases).

prediction scores. This led us to argue that there was “a strong case for again making available to Parole Board members the actuarial risk of reconviction score (suitably updated) for each prisoner.” We also suggested that Board members should be directed specifically to give weight to the score, which could then be considered alongside the recommendations made by professionals who had first-hand knowledge of the prisoner.⁵⁶ Our views found support in the recently published *Comprehensive Review of Parole*, which recommended that: “All release Directions should require panels to take account of an actuarial risk predictor tool, where such a predictor is available.”⁵⁷ It is therefore encouraging that when, in March 2004, the Home Secretary issued new directions to the Parole Board on the release of determinate sentence prisoners, he included a clause that required the Board to take into account, “if available, the indication of predicted risk as determined by a validated actuarial risk predictor.”⁵⁸

IV. CONCLUSIONS

The type of re-offending which is of greatest concern to Parole Board members—very serious violent or sexual re-offending—is that which is least likely to occur.⁵⁹ Parole decision making is thus of necessity largely a question of trying to predict a rare event, difficult enough in relation to aspects of the physical world such as the weather, but even more problematic when what is in issue is human behavior. At the heart of matter is what sort of risks it is proper for a responsible parole board to take. Writing in 1966, the distinguished jurist Professor Manuel López-Rey made it clear where he thought the balance ought to lie. Parole boards, he said, should not only be willing to release “good risks”—a prisoner “who, after everything has been taken into account, even parole prediction tables, is regarded as one who in all probability will conduct himself as expected”—but also “calculated risks”—those for whom “the chances are more or less equally divided.” “[A]s long as certain fundamental social and economic policies, and more particularly prison policy, are not organized as they should be,” he reasoned, the danger posed by “calculated risks” is “one that society, not the board, is supposed to accept.” Only “bad risks”—prisoners who, “in all probability, will be back [in prison] before parole is ended”—ought to be required to remain in secure conditions.⁶⁰ Yet, in the late 1990s, the Parole Board in England and Wales was very reluctant to take what López-Rey termed calculated risks. As a consequence, the parole rate declined. Whereas the proportion of prisoners granted parole at

⁵⁶ See HOOD & SHUTE, *supra* note 31, at 78.

⁵⁷ H.M. PRISON SERVICE, *THE COMPREHENSIVE REVIEW OF PAROLE AND LIFER PROCESSES* 88 (2001).

⁵⁸ See 419 PARL. DEB. H.C. (6th ser.) col. 32, Mar. 18, 2004 (Written Ministerial Statement).

⁵⁹ See Vincent O’Leary & Daniel Glasser, *The Assessment of Risk in Parole Decision Making*, in *THE FUTURE OF PAROLE*, 135, 194 (D.J. West ed., 1972).

⁶⁰ See López-Rey, *supra* note 45, at 261.

some point in their sentence in the late 1980s had been around 70%, by the late 1990s it had fallen to around half.⁶¹ Indeed, in our study of parole decision making carried out at that time, Professor Roger Hood and I found that although half of our sample of prisoners had a statistical risk of reconviction for a serious offense while on parole license of 7% or less, only half of these low-risk prisoners were actually paroled, notwithstanding the fact that almost four out of ten of them had been recommended for release by both their home and their prison-based probation officers.⁶² Against this background, we argued that there was scope for a much more expansive release policy to be adopted, and that message appears to have been heeded: in each of the three years following the publication of our study the proportion of prisoners granted parole has increased.⁶³

Whether this upward trend will continue, however, is far from clear, and in any event the system is about to undergo a major transformation as a result of the enactment of the Criminal Justice Act 2003, which places the emphasis even more firmly on prisoners who are considered to be a high risk. Nonetheless, when reflecting on the question of whether parole “works,” it should not be forgotten that a system that overly restricts the granting of parole may engender negative attitudes which, in turn, may have a deleterious effect on attempts to encourage long-term inmates to change their patterns of criminal behavior.⁶⁴

⁶¹ See HOME OFFICE, ANNUAL REPORT AND ACCOUNTS OF THE PAROLE BOARD FOR ENGLAND AND WALES 2002–2003, at 59 (2003).

⁶² See HOOD & SHUTE, *supra* note 31, at 37, 77–78. There were 226 prisoners in the sample with a risk of reconviction score of 7% or less, 112 (49.5%) of whom were denied parole. Of these 112, 42 (37.5%) had been recommended for parole by both probation officers.

⁶³ See HOME OFFICE, *supra* note 61, at 57.

⁶⁴ See HOOD & SHUTE, *supra* note 31, at 78.

